IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 585 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHENDRA JIVABHAI CHAUHAN - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR PREMAL R JOSHI for Applicant(s) : 1,
Mr.U.R.Bhatt, A.P.P. for Respondent(s) : 1,
None for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 18/04/2007

CAV JUDGMENT

1. Heard learned Advocate Mr.Premal Joshi for the petitioner , learned A.P.P. Mr. U.R.Bhatt for the respondent no.1

2. Rule. Learned A.P.P. Mr. U.R.Bhatt waives service of rule on behalf of the respondent no.1.

3. The petitioners has preferred the present application under Section 482 of the Criminal Procedure Code praying for quashing and setting aside Criminal Complaint being I-CR no.23 of 2005 registered with DCB Gandhinagar Zone Police Station for the offence punishable under Secs.420, 465, 466, 467, 468, 471 and 120-B of the Indian Penal Code qua the petitioner.

4. It is the case of the petitioner that one Vijay K.Nayak approached the Upasana Higher Secondary School, where the petitioner was the Principal at the relevant time, for securing admission to Std.XI and filled up the prescribed form. As required under the rules, the said Vijay K.Nayak had also produced the original School Leaving Certificate and true copy of the marksheet issued by Gujarat Secondary Education Board in respect of SSC Examination. Accordingly he got admission to Std.XI, and after completing Std.XI when the said Shri Nayak had sought admission for Std.XII, it came to the notice of the Education Department during inspection in the year 2002-2003 that forged marksheet of S.S.C. Has been submitted by Shri Nayak. The allegations against the present petitioner is to the effect that, on thorough inquiry, the Education Board found that the present

petitioner who is the Principal of the School concerned and the staff were also involved in preparing the false and fabricated marksheet, and hence, the complaint is filed against the present petitioner and other accused.

5. Mr. Premal Joshi, learned Counsel for the petitioner-accused argued that the complaint does not at all disclose any of the offences for which he is facing the charges and that the petitioner has been falsely implicated. According to the learned Counsel when prima facie no offence is found to have been committed by the petitioner-accused, the complaint is required to be quashed and set aside.

6. As against that, it is the submission of learned A.P.P. Mr. U.R.Bhatt for the respondent-State that the charge-sheet is already filed in this case, and hence, at this juncture, this Court should not interfere and quash the complaint, more so when the remedy is available to the petitioner of preferring appropriate application before the lower Court for discharge or otherwise. According to the learned A.P.P. the application, therefore, is required to be dismissed.

7. This Court has minutely gone through the papers of investigation . A bare perusal of the mark-sheet, a true copy of which is produced at Annexure “D” makes it abundantly clear that

the same is bogus, false or fabricated one. Therefore, when prima facie, it is found that false and fabricated mark-sheet has been produced before the present petitioner who was the Principal at the relevant point of time and admission was secured by the other accused Shri Vijay K.Nayak on the basis of the forged mark-sheet, it can be said that at this stage some material is there for initiating proceedings against the petitioner. The question whether the petitioner would be convicted or acquitted at the trial is a different matter. It is pertinent to note that after thorough inquiry by the Education Department, the complaint is filed by the District Education Officer wherein the offence also includes Section 120-B which necessitates recording of evidence for proving conspiracy.

8. Learned Counsel Mr. Joshi for the petitioner has cited the following authorities :

1. State of J & K Vs. Romesh Chander and Others reported in (1997) 1 Suprme Court Cases 90.

2. G. Sagar Suri and Anr. v. State of U.P. & Ors. Reported in JT 2000(1) SC 360.

3. Medchl Chemicals & Pharma (P) Ltd. v. Biological E.Ltd. And Others reported in (2000) 3 Supreme Court Cases 269.

4. Rishi Anand and Another v. Govt. of NCT of Delhi and Ors. Reported in (2002) 4 Supreme Court Cases 72.

5. Sanju alias Sanjay Singh Sengar v. State of M.P. Reported in (2002 5 SCC 371.

6. Umedsinh P.Champavat v. State of Gujarat reported in 2006(2) G.L.H.736.

8.1 This Court has carefully gone through all these authorities and that none of them could be of any help to the peitioner.

9. For all these reasons, the application deserves to be dismissed. Rule is discharged.

(M.D.Shah,J.)

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